

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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RAFAEL SOTO,

Plaintiff,

-against-

Index No.  
12 CV 4241  
(MKB) (VVP)

THE CITY OF NEW YORK, COUNTY OF KINGS,  
DISTRICT ATTORNEY CHARLES J. HYNES,  
DETECTIVE DANIEL BONILLA, POLICE OFFICER  
ADAM FEDER, ASSISTANT DISTRICT ATTORNEY  
JOHN GIANNOTTI, ASSISTANT DISTRICT ATTORNEY  
LINDSAY GERDES, LIEUTENANT CHRISTOPHER  
MARROW, and DETECTIVE BRIAN MEICHSNER,  
Defendants.

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January 16, 2014  
11:25 p.m.

EXAMINATION BEFORE TRIAL of ASSISTANT  
DISTRICT ATTORNEY LINDSAY GERDES, one of the  
Defendants here, taken by Plaintiff, held at  
225 Broadway, New York, New York, pursuant  
to Order, before a Notary Public of the  
State of New York.

HARRIET BEIZER ASSOCIATES  
'THE VERBATIM REPORTING SERVICE'  
70-50 AUSTIN STREET  
FOREST HILLS, NEW YORK 11375-4252  
(718) 544-4199

1 L. GERDES, ESQ.

2 A No.

3 Q Have you ever been  
4 arrested?

5 A No.

6 Q When was the first time  
7 that you learned about the underlying  
8 criminal matter with Masahira Yoshida,  
9 which is the subject of the lawsuit that  
10 we're here for today?

11 A The day of the crime, on  
12 October 20, 2011.

13 Q How did you hear about it?

14 A I got a call from my boss.

15 Q Who is your boss?

16 A Jeff Levitt.

17 Q What was his position?

18 A He's the Executive of the  
19 Blue Zone.

20 Q What did he tell you?

21 A He told me that there was  
22 an arrest. This is in sum and substance,  
23 because we're talking about a  
24 conversation that took place over two  
25 years ago.

1 L. GERDES, ESQ.

2 Q Absolutely, yes.

3 A Basically, that there was  
4 an arrest at the 76 Precinct. This is  
5 based on what my recollection is. That  
6 it was a serious case, because a man was  
7 abducted, but found. That one of the  
8 guys who committed the crime wanted to go  
9 on video.

10 That there was a rider from  
11 our office. There is a special unit  
12 called the Investigations Bureau at my  
13 office. When there is a defendant who  
14 wants to make a videotaped statement,  
15 there is somebody, basically, who goes to  
16 the precinct to take the statement from  
17 them.

18 He said that there is a  
19 rider who is at the precinct, but you're  
20 going to be assigned the case. You're  
21 going to handle it from, you know, Grand  
22 Jury to trial. So, you know, I think it  
23 would be a good idea, if you can, to go  
24 so that you can, you know, learn as much  
25 about the case as quick as possible.

1 L. GERDES, ESQ.

2 Q By "rider," do you mean  
3 someone who is coming along, or is that  
4 some other term that you use?

5 A No. That's what our office  
6 calls it. It's basically -- I don't know  
7 how it started. I think it's like ride  
8 along maybe with the police, but that  
9 might be my own of what I have just  
10 gleaned that term to mean.

11 That's their general role.  
12 The Investigations Bureau also writes up  
13 search warrants, when there needs to be a  
14 search warrant, or if they need to get a  
15 trap and trace, or a pen register. They  
16 take care of things like that.

17 So he was going --  
18 basically, the precinct calls our office  
19 and says, we have a guy here who -- this  
20 is generally how it works -- wants to go  
21 on video. You know, can an ADA come down  
22 and do the video?

23 Somebody from tech  
24 services, who is the video man, comes  
25 with a camera and an ADA, who, you know,

1 L. GERDES, ESQ.

2 does these videos, and goes down. That  
3 was John Giannotti in this case.

4 Q John Giannotti actually  
5 worked with the special investigation  
6 unit?

7 A I believe it's called the  
8 Investigations Unit.

9 Q I apologize. The  
10 Investigations Unit.

11 A That was really the first  
12 time I ever had interactions with him in  
13 my six years.

14 Q John Giannotti?

15 A Yes. In my four years, I  
16 guess, at the time.

17 Q Do you know what his title  
18 at the Kings County DA's Office is?

19 A Assistant District  
20 Attorney. You're using different terms.  
21 You said what his title is, but before  
22 you asked me what my position was.

23 You know, everyone, setting  
24 aside from the District Attorney, is an  
25 Assistant District Attorney. There is a

1 L. GERDES, ESQ.

2 difference between -- like, Assistant  
3 District Attorney is not my title, when  
4 we were back in the beginning and you  
5 asked me that. That's my position, but  
6 that's not my title.

7 Q I see. What is your title?

8 A I'm Of Counsel to the Blue  
9 Zone.

10 Q What is the distinction  
11 between that and, say, another position?

12 A It's, basically, a  
13 promotion. You start off as an Assistant  
14 District Attorney. When you work your  
15 way up through, you know, trials and  
16 seniority in the office, you go to then  
17 Senior Trial Attorney and then Of  
18 Counsel. I don't know what John  
19 Giannotti's title is. He's been in the  
20 office longer than me, I believe, but I'm  
21 not even 100 percent positive about that.

22 So, he was at the precinct.  
23 So, I was actually at the school. It's a  
24 Legal Lives Program that my office does.

25 Q Legal wise?

1 L. GERDES, ESQ.

2 A Legal Lives, L-I-V-E-S. I  
3 was teaching fifth-graders about the  
4 criminal justice system, and I got a call  
5 from my boss explaining what I just laid  
6 out to you.

7 Then I took, you know, the  
8 car service that was bringing me from the  
9 school back to the office, and we  
10 diverted and went to the 76 Precinct. I  
11 got dropped off at the 76 Precinct, and  
12 John Giannotti was already there.

13 Q Had the interview started  
14 by the time you had gotten there?

15 A No.

16 Q Were you there for the  
17 entire interview?

18 A Of Pablo Dickinson?

19 Q Of Pablo Dickinson,  
20 correct.

21 A Yes.

22 Q What, if anything, else,  
23 other than the actual interview, did you  
24 do while you were at the precinct?

25 A I spoke to some of the

1 L. GERDES, ESQ.

2 I'm answering these questions to the best  
3 of my ability.

4 Q That is all I want. I'm  
5 not trying to make you guess about  
6 anything. Again, these questions are  
7 about the Kings County District  
8 Attorney's Office's practices and  
9 procedures. Not necessarily what your  
10 obligations are when you go to court on a  
11 particular matter.

12 Again, do you know if there  
13 is some sweep that they do of their hard  
14 drives? For example, if you have an  
15 indictment or a computer file that's been  
16 on the computer for nine years, do they  
17 delete it after that time? Those are  
18 just examples. Do you know anything  
19 about that at all?

20 A Not to my knowledge.

21 Q You indicated earlier that  
22 when you got to the 76 Precinct that you  
23 spoke with Detective Bonilla; is that  
24 correct?

25 A Yes.



1 L. GERDES, ESQ.

2 Q What was the sum and  
3 substance of your conversation with  
4 Detective Bonilla?

5 A It's difficult for me to  
6 say exactly what information came from  
7 which officer, because it's like, you  
8 know, Police Officer Feder was there,  
9 Police Officer Erdochowski was there, the  
10 victim was there.

11 So, at this point, you  
12 know, two years later, as far as what  
13 information came from which of those  
14 respective sources, I don't -- you know,  
15 it's difficult for me to say that.

16 Basically, I learned about  
17 the overall case, the circumstances of  
18 the victim's assault, abduction. You  
19 know, they found him in the van, what was  
20 in the van. I learned about the victim  
21 and the bread route. You know, I learned  
22 about his dealings with Rafael Soto, his  
23 dealings with Mr. Route.

24 I learned about what Pablo  
25 Dickinson was saying to Detective

1 L. GERDES, ESQ.

2 Bonilla. I learned about what kind of  
3 evidence was recovered inside of the  
4 victim's van; meaning, zip ties, the  
5 guns, the extent that there was a lot of  
6 blood there. I saw the victim's  
7 injuries.

8 So, I got an overall  
9 picture of, you know, what we were  
10 dealing with. You know, over two years  
11 later, as far as which tidbit of  
12 information came from which of those  
13 respected sources, it's difficult for me  
14 to say that now.

15 Q Understandable. One of the  
16 things that's, obviously, at issue here  
17 is when you knew certain things.

18 A Right.

19 Q Bear with me, if I'm going  
20 through things piecemeal; okay?

21 A Totally fine.

22 Q I know that you've given us  
23 a general overview of the subject matters  
24 that you learned about when you were at  
25 the 76 Precinct that initial time.

1 L. GERDES, ESQ.

2 Can you go into more detail  
3 about exactly what you were told?  
4 Obviously, I know that you don't remember  
5 who necessarily it came from.

6 A Right.

7 Q Are you able to go into  
8 more detail?

9 A About what I learned?

10 Q Yes.

11 A Yes. I, basically, had  
12 learned that the victim was coming home  
13 from work that day. That he, basically,  
14 was coming home at his normal time. That  
15 he goes to, basically, some type of  
16 depot, or whatever, just to make sure the  
17 bread trucks get out on time and that  
18 everything is stocked. When he's  
19 finished with that, he comes home.

20 His wife was also there at  
21 the precinct. I learned that his wife  
22 was awake, you know, at this time,  
23 because she was working on -- she's an  
24 accountant and she was working on some  
25 type of job.

1 L. GERDES, ESQ.

2 The victim explained what  
3 had happened to him and what people said  
4 to him. That these perpetrators, these  
5 masked perpetrators, who were speaking  
6 Spanish at different times and some  
7 English, were demanding the \$100,000 from  
8 his safe in his apartment.

9 He said that they ambushed  
10 him after he got out of his car and was  
11 heading towards his building. That he  
12 was pistol-whipped. That they were  
13 saying, you know, take us to your  
14 apartment. Take us to your apartment.  
15 They were demanding the \$100,000 from the  
16 safe in his apartment.

17 He explained to me how he  
18 was trying to stall, fumbling for his  
19 keys. That he tried to misdirect them at  
20 first, because he knew his wife was home.  
21 That one of them knew his floor. It's  
22 not like he could really distinguish as  
23 to who was saying what, because they were  
24 both masked. That one of the guys was  
25 then saying, no. We know you live at

1 L. GERDES, ESQ.

2 2-G. That they knew his exact apartment  
3 number.

4 He explained to me then  
5 that once he knew that, he had to take  
6 them to his correct floor. He was trying  
7 to stall in the hallway, dropping his  
8 keys. They were hitting him with the  
9 guns. They hit him with a hammer. He  
10 said he put the keys in his door, was  
11 trying to make noise to alert his wife.

12 That finally he, basically,  
13 said to them, look, I have money out in  
14 my car. Take me out to my car. I have  
15 some COD money, which was cash on  
16 delivery money, out in my car. They took  
17 him out to the car. When they got to the  
18 car, they realized that there's no money  
19 in the car.

20 Then, they throw him in the  
21 back of his van. Now, we're talking  
22 about the victim's white industrial type  
23 of van. They zip-tie him. Then, they  
24 beat him a little bit more in the back of  
25 the van, he said. Then they drive off.

1 L. GERDES, ESQ.

2 It's like they're panicking, kind of.  
3 They don't know what they're doing.  
4 They're telling him they know he's got  
5 money, \$100,000, in his safe.

6 He tries to tell them,  
7 look, call my wife. Maybe she can get  
8 you some money. That he had given them,  
9 I believe, his phone, but he doesn't know  
10 if the call ever went through to his  
11 wife, because he wasn't on the other end.  
12 He wasn't a party to that phone call.

13 Q Right.

14 A Then, he said they were  
15 speaking Spanish between the two of them.  
16 He's, like, facedown in the back hogtied  
17 at his hands and feet. They pull over  
18 and stop and that they're talking.

19 Basically, what he's  
20 telling me is that he felt like they were  
21 trying to figure out what they were going  
22 to do. At one point they were telling  
23 him that they were going to kill him and  
24 throw him over the bridge. Then, all of  
25 a sudden, this police car comes and saves

1 L. GERDES, ESQ.

2 him, basically.

3 He explained that he never  
4 really got a good look -- the people had  
5 masks on during the incident. When the  
6 police take them out, they were facedown  
7 on the ground. At one point, he could  
8 barely see the side of somebody's face,  
9 but not to, like, really make them out.  
10 So, he didn't know who did this to him at  
11 the time.

12 Then, when we got to the  
13 precinct, he was trying to, like,  
14 mentally process all of this and figure  
15 out who did this to him and why this  
16 happened. He was, basically, coming back  
17 to this idea of the potential purchase of  
18 Rafael Soto, because he told Rafael Soto  
19 that he had \$100,000 in a safe.

20 He was telling me that he  
21 mentioned this to Soto, because he wanted  
22 to legitimize himself as a buyer. These  
23 are all-cash deals, always. So, he  
24 wanted him to know, look, I'm ready to  
25 move. I can do this. Take me seriously.

1 L. GERDES, ESQ.

2 He was explaining to me that he had  
3 looked into buying his route in August, I  
4 believe. The end of July or August, but,  
5 basically, the summer of 2011.

6 He told me that he went out  
7 on the route one day with his driver,  
8 Jonathan. He said, you know, they drove  
9 through the route. That they had lunch  
10 together that day, he and Jonathan. He  
11 told me he had never met Rafael himself.

12 As he's telling me the name  
13 Jonathan, I'm realizing that I know one  
14 of the perpetrators in custody has the  
15 first name of Jonathan. This is a  
16 pretty -- I don't know if you want to  
17 call it a coincidence. This is very  
18 interesting that he's saying this. He  
19 says the guy is Dominican and this guy,  
20 you know, appeared to be Dominican.

21 What he was telling me was  
22 that as part of this potential deal, he  
23 had given over his name, his address, and  
24 said that he had the \$100,000 in the  
25 safe, and that's what these people were



1 L. GERDES, ESQ.

2 coming and asking for. The one person  
3 who knew that he had the \$100,000 in his  
4 safe and who he was saying knew his  
5 address was Rafael Soto, his personal  
6 address, because at no time did he ever  
7 take Jonathan to his house or give  
8 Jonathan his home address.

9 So, as he's saying this,  
10 Detective Bonilla has him look at  
11 Jonathan in a cell and he says -- well,  
12 they didn't tell him his name was  
13 Jonathan. They have him look at Mena in  
14 a cell and he says, yes, that's Jonathan.  
15 That's the guy who I drove around with.  
16 Yes, that's him.

17 Q Were you there for that?

18 A I was at the precinct.

19 Q When they showed Mr.  
20 Yoshida Jonathan in the cell?

21 A I was physically at the  
22 precinct.

23 Q Did you actually see that  
24 happen though?

25 A I couldn't hear what the

1 L. GERDES, ESQ.

2 victim said to the cop, but then I spoke  
3 to the victim after, and he told me that  
4 that was Jonathan. I was on the same  
5 floor and, like, I think I could maybe --  
6 I think, if memory serves me correctly, I  
7 could see the victim, but I wasn't within  
8 earshot to hear.

9 Then, I spoke to the victim  
10 after and he's, like, in shock, kind of.  
11 Not in shock. You know, he's like yes,  
12 that's him. So, as he's saying all of  
13 this, Bonilla is filling me in on what  
14 Pablo Dickinson had said, because they  
15 had talked before I arrived.

16 Pablo Dickinson was saying,  
17 basically, that he got a call the night  
18 before from Jonathan asking him if he  
19 wanted to do this job with him. That  
20 this was going to be easy money. That  
21 they were going to go rob this Asian guy.  
22 That he was going to have \$100,000 in his  
23 safe, and that they were each going to  
24 get a cut.

25 I believe he thought he was

1 L. GERDES, ESQ.

2 going to get 20,000. Then, Dickinson had  
3 told the detective, and told us on video,  
4 that he and Mena, I believe, were going  
5 to each get 20 or something. Basically,  
6 that amount. I would have to look at the  
7 transcript or the video. I believe you  
8 have that, as far as the exact amount.  
9 That the rest of the cut, the rest of the  
10 \$100,000, was going to this third person.

11 So, from what Dickinson was  
12 then telling us that day at the precinct,  
13 there was a third person who was involved  
14 in this criminal transaction, who, in my  
15 mind, was the mastermind of this, because  
16 this third person is getting  
17 substantially more than the two of them.  
18 Best case scenario, they're each getting  
19 20, and then this third person is  
20 getting, you know, the difference, the 60  
21 grand.

22 So, from day one, the idea  
23 that there was this third person involved  
24 came to light. The reason why, you know,  
25 the evidence was pointing towards it

1 L. GERDES, ESQ.

2 being Rafael Soto was because we knew  
3 that the victim had told Rafael Soto, you  
4 know, that he had \$100,000 in his safe,  
5 and that the victim had given his name  
6 and address in connection with this  
7 purchase. So, the person who knew these  
8 pieces of information was Rafael Soto.

9 We also then knew that the  
10 van -- Pablo Dickinson had explained to  
11 them that the van was still parked there.  
12 That the police were able to locate the  
13 van right away. That the van was  
14 registered to Rafael Soto. So, the van  
15 that they actually got at the scene of  
16 this abduction is registered to the man  
17 who has knowledge that the victim has  
18 \$100,000 in his safe, and registered to  
19 the same man who knew the victim's home  
20 address.

21 So, I'm trying to give you,  
22 kind of -- that's the large majority of  
23 what we knew that day at that time at the  
24 precinct. Information as far as --  
25 there's a lot more information that I

1 L. GERDES, ESQ.

2 find out before Rafael Soto's arrest.

3 Q Sure. We'll go through  
4 that piece by piece as the investigation  
5 progressed.

6 A Sure.

7 Q At that particular time,  
8 did you have any other information or  
9 evidence that pointed towards Rafael  
10 Soto?

11 A Let me think. I also knew  
12 from the victim that -- I told you that,  
13 you know, when he was really looking into  
14 buying Soto's route, it was either in  
15 late July or early August. Basically,  
16 summer of 2011.

17 He also said that in  
18 September, the broker reached out to him,  
19 Mr. Route, to say, look, that route that  
20 you had looked at is still available.  
21 Are you interested? So, we knew that he  
22 was still, basically, looking for someone  
23 to unload his \$100,000 -- really \$135,000  
24 route on in September. So, he was  
25 needing money, in my estimation, as of,

1 L. GERDES, ESQ.

2 you know, a couple of weeks before this  
3 happened.

4 I also knew that the person  
5 who Mena recruited to do this job, who  
6 was somebody who also knew Soto, was,  
7 basically, quote unquote, "like a friend  
8 of the family." These guys went way back  
9 together. This wasn't, you know,  
10 somebody who was just friends with Mena.  
11 This was somebody who, in theory, could  
12 be trusted within that inner circle.

13 According to what Dickinson  
14 told us, I also knew that Mena had his  
15 own car. In his videotaped statement, he  
16 gave the type of car that Mena typically  
17 drove. So, in theory, instead of driving  
18 his own car, he was driving Soto's van.  
19 I think that's, in the big picture, the  
20 things that I knew that day.

21 Q Well, it's very important  
22 for me to know specifically if that's the  
23 totality of --

24 A Of that day?

25 Q Yes, because, again, what

1 L. GERDES, ESQ.

2 is at issue here is what you knew, when  
3 you knew it, and whether or not you had  
4 probable cause.

5 A To arrest, but he wasn't  
6 arrested that day.

7 Q Correct. I still need to  
8 know when you knew different things.

9 MR. FRANCOLLA: Is there a  
10 question? I think what she is  
11 saying is, that's what she  
12 remembers.

13 A That's what I remember. As  
14 I sit here today, that's what my memory  
15 is. Am I saying that I 100 percent know  
16 that there wasn't another piece of  
17 information that I knew? As I sit here  
18 today, over two years later, that's what  
19 I remember learning that day.

20 MR. MOUTON: I'll leave a  
21 blank in the transcript. If  
22 you remember anything else,  
23 you can fill that in; okay?

24 THE WITNESS: Okay.

25 MR. FRANCOLLA: So that

1 L. GERDES, ESQ.

2 we're clear for the record,  
3 that's as to the facts that  
4 she learned which presumably  
5 would go to probable cause to  
6 arrest Rafael Soto on October  
7 20, 2011?

8 MR. MOUTON: Yes.

9 MR. FRANCOLLA: Okay.

10 INSERT:\_\_\_\_\_

11 A Oh, the license plate  
12 thing. I also knew that they covered  
13 license plates, which would have come  
14 back to Rafael Soto with Minnesota  
15 license plates.

16 Pablo Dickinson had told us  
17 that they changed the license plates more  
18 than once. He couldn't remember. He  
19 knew they went over a bridge. He  
20 couldn't remember which bridge it was,  
21 because he was saying he's not that  
22 familiar with Brooklyn, basically.

23 I knew that they were  
24 covering up license plates which would  
25 have identified that vehicle, not to



1 L. GERDES, ESQ.

2 them, to Rafael Soto. So, that was even  
3 more evidence that pointed towards Rafael  
4 Soto's potential involvement, because  
5 they're trying to shield his  
6 participation in this and his involvement  
7 by doing him the solid, basically, of  
8 covering up his license plate when they  
9 crossed over the bridge.

10 It was also very important  
11 information, because if he wasn't  
12 involved, it wouldn't be as important for  
13 them to cover up his license plate,  
14 because, again, this car wasn't going to  
15 come back to -- it wasn't registered to  
16 either of them. So, that was very  
17 important.

18 Q I just want to get a brief  
19 list. Obviously, it's not going to be  
20 the full explanation you've given, but I  
21 just want to give you a brief list, and  
22 you can tell me if my understanding is  
23 complete as to the evidence that you  
24 believed you had against Rafael Soto on  
25 October 20, 2011, because I want to ask

1 L. GERDES, ESQ.

2 you questions about each specific one;  
3 okay?

4 A Isn't that what the record  
5 is for? I mean, because I don't want to  
6 feel like you forget to tell me one of  
7 the things I just said on the record.

8 Q If I forget to tell you,  
9 that's my fault. I just want to have the  
10 information about it so that I can ask  
11 you about it.

12 A Okay.

13 Q Let me just take a minute  
14 and write it up.

15 A Okay.

16 Q My understanding, just as a  
17 brief synopsis, is that Soto had  
18 Yoshida's address. Soto had knowledge of  
19 the \$100,000 in Yoshida's safe. That  
20 Yoshida had gone with Jonathan on the  
21 route for one day. That he did not tell  
22 Jonathan his address. He didn't tell him  
23 about the money. That he did not take  
24 Jonathan to his home address.

25 Dickinson said that there

1 L. GERDES, ESQ.

2 was a third person. The van was  
3 registered to Soto. Soto was trying to  
4 unload his route. Dickinson knew Soto.  
5 Mena had his own car, but decided to use  
6 Soto's van, and they had covered the  
7 plates so as not to trace the car back to  
8 Soto.

9 MR. FRANCOLLA: I'm going  
10 to object to the extent that  
11 this information has already  
12 been provided.

13 You can answer.

14 A There's two things. I  
15 never said that Yoshida never told Mena  
16 about the money.

17 Q Okay.

18 A Mr. Yoshida wasn't sure  
19 whether or not he told Mena about that,  
20 but I knew he didn't tell Mena about his  
21 address. Yoshida was, basically, saying,  
22 in so many words, there's only one person  
23 who knew both of those things. In his  
24 mind, that's what he's telling me.

25 He said that he filled out

1 L. GERDES, ESQ.

2 this Mr. Route paperwork. So he's  
3 thinking that Soto, obviously, has this.  
4 He also had spoken to Soto multiple times  
5 on the telephone, and Soto was supposed  
6 to come meet him at Mr. Route's once and  
7 never showed.

8 The other thing that was,  
9 kind of, important is that I was, kind  
10 of, getting an impression that certain  
11 things with Soto were, like, a little  
12 fishy, because Mr. Yoshida was also  
13 telling me that the route -- the reason  
14 why the deal fell through was because  
15 Soto couldn't get him the numbers that he  
16 wanted to substantiate for the route.

17 So, really, the route  
18 wasn't worth what Soto was saying that it  
19 was worth, and what he was trying to sell  
20 the route for, because he could never  
21 back up the numbers. Like, he provided  
22 him with certain numbers that he said the  
23 route made. That Mr. Yoshida was asking  
24 for the details, and he never got him  
25 that.

1 L. GERDES, ESQ.

2 There was something else that made you  
3 believe, as well, that pushed it even  
4 further in your mind, that there is this  
5 third person involved, and it's Soto, and  
6 he's taking a larger piece of the pie,  
7 and it's not just that Mena is saying  
8 that, or that Jonathan told him that?

9 A Correct.

10 Q So, there was a text  
11 message that --

12 A Just so -- because I want  
13 to clarify even what my knowledge is as  
14 of now. Pablo Dickinson then later did  
15 tell us that Mena told him that Soto was  
16 getting the rest, just so you know that.

17 Q When was it that he told  
18 you that?

19 A When he met with our  
20 office. He, basically, was the subject  
21 of a threat in jail. I believe it was in  
22 December of 2011, if memory serves me  
23 correctly.

24 We met with him for the  
25 first time, I think, after the initial

1 L. GERDES, ESQ.

2 precinct interview, in connection with a  
3 threat. Then we met with him, like, once  
4 after with his attorney, or maybe twice  
5 after. He told us that Mena told him  
6 that Soto was, you know, getting the  
7 rest.

8 He told us that the reason  
9 he didn't say that on the video that day  
10 was because he and Mena were, basically,  
11 caught redhanded. He knew he was, you  
12 know, dead to right, but he wasn't  
13 necessarily looking to bring a third  
14 person down that day who didn't get  
15 arrested. You know, I guess, when I  
16 heard that later, my suspicions were  
17 confirmed.

18 Q Sure. That interview that  
19 you had in December of 2011 with  
20 Dickinson, was that recorded?

21 A No.

22 Q Was it written down  
23 anywhere?

24 A No. His attorney was  
25 present though. His attorney was David

1 L. GERDES, ESQ.

2 A No. I actually think that  
3 at some point I spoke to Jonathan Mena's  
4 wife, and she told me -- because I was  
5 telling her what Mena was saying. She  
6 told me that they had cars.

7 Q Did she tell you how many  
8 cars they had?

9 A No.

10 Q Did she tell you what kind  
11 of cars they had?

12 A I can't remember.

13 Q At this particular  
14 juncture, did you look into any financial  
15 background of Jonathan Mena?

16 MR. FRANCOLLA: What  
17 particular juncture?

18 Q On October 20, 2011, did  
19 you begin to inquire about his financial  
20 stability or background?

21 A Well, he wasn't talking to  
22 us. He just gave his pedigree  
23 information to the police. So, we didn't  
24 have, you know, his bank account  
25 information. I didn't know what banks he

1 L. GERDES, ESQ.

2 banked with. I didn't know anything  
3 about that, and he wasn't talking.

4 Q When did you speak to his  
5 wife?

6 A I don't remember the exact  
7 date. At some point.

8 Q Was it before or after  
9 Rafael Soto was arrested?

10 A It was after.

11 Q Would it surprise you to  
12 know that Jonathan Mena was actually in  
13 the process of being evicted from his  
14 apartment, owed money to several people,  
15 and did not own a vehicle?

16 A Would it surprise me to  
17 know that now?

18 Q Yes.

19 A I think he filled out a  
20 rental application for a new apartment  
21 and talked about his income. So, yes,  
22 that would surprise me now.

23 I believe that his wife  
24 told me that they did have a car. At  
25 least a car. So, if you told me that



1 L. GERDES, ESQ.

2 A I recognize it.

3 Q What is that document?

4 A It's my understanding that  
5 this is a document -- you know, this is  
6 my understanding from how it was  
7 vouchered and what I know about the case.  
8 This is a document that was found in the  
9 van registered to Soto, the FedEx van. I  
10 saw this document shortly before Mena's  
11 trial started.

12 Q It was in evidence, and it  
13 was accessible to you; is that correct,  
14 before Rafael Soto was arrested?

15 A Correct.

16 Q It's just that you did not  
17 review it?

18 A Right. I didn't know it  
19 existed.

20 Q It was accessible to you,  
21 because you knew about the voucher  
22 numbers, you knew about all the evidence  
23 that had been vouchered, and you just had  
24 not reviewed it; is that correct?

25 A I knew that there was

1 L. GERDES, ESQ.

2 miscellaneous papers recovered. I  
3 believe that's how the police entitled  
4 the voucher. I think it was maybe  
5 something like 67 or X number of  
6 miscellaneous pages.

7 This was another receipt,  
8 this Home Depot receipt, that is marked  
9 A11514. This was also recovered in the  
10 car. You know, because, what I assume  
11 we'll be talking about later pertaining  
12 to the zip ties, this became relevant.

13 So, this one receipt or  
14 document (indicating) from the car got  
15 vouchered, and I saw a copy of this  
16 before Soto's arrest. As far as these  
17 papers (indicating), I did not see these.

18 Q Now, you indicated that you  
19 believed that because Rafael Soto was  
20 selling his route that he was hard up for  
21 money; is that correct?

22 A That he was, yeah. That he  
23 was looking -- hard up for money, yes.  
24 That I thought he was looking for money  
25 at that point.

1 L. GERDES, ESQ.

2 A Correct.

3 Q Do you know when they  
4 brought that van into the 76 Precinct, if  
5 at all?

6 A I think it was within about  
7 a day. Within, like, the 24-hour period.  
8 Whether it was later, I think it got  
9 towed. It was soon. The search warrant  
10 was executed on the van on October 24th  
11 of 2011. When the search warrant was  
12 executed, the van was at the precinct.

13 Q Now, I'm just going to go  
14 back, because earlier you indicated that  
15 on 10/20/11 is when you saw the various  
16 documents from the vehicle. Would it be  
17 safe to assume that --

18 A I didn't say that. What I  
19 saw on 10/20 was the notes that the  
20 victim had brought. I didn't see any  
21 documents from Soto's vehicle, with the  
22 exception of the Home Depot receipt until  
23 just before the Mena trial.

24 Q I apologize. You're right.  
25 Were you aware that there was other

1 L. GERDES, ESQ.

2 A No, that was the only time  
3 in connection with this case that I was  
4 at the precinct.

5 Q As the detectives would  
6 find things or voucher things, would they  
7 send you the voucher numbers, et cetera?

8 A I think they might have  
9 given me a lot of the paperwork when they  
10 came to Grand Jury.

11 Q Between the time of  
12 10/20/11, when you were at the precinct,  
13 and excluding the time when they gave you  
14 the photos on 10/24/11, before Mr. Soto  
15 was arrested, did you ask the police  
16 officer if they came up with any more  
17 documents or evidence regarding the  
18 incident on 10/20/11?

19 A Of course, because, you  
20 know, we got subpoenas for the phones, or  
21 the police did. I don't remember who got  
22 the subpoenas. So, I knew Detective  
23 Bonilla was going to TARU to get the  
24 phones downloaded.

25 So, before Mr. Soto's

1 L. GERDES, ESQ.

2 arrest, I saw text messages from the  
3 phone. On 10/24/11, I also learned that  
4 they found in the van the Home Depot  
5 receipt, which was for the packaging or  
6 the purchase, I should say, of two packs  
7 of 24 zip ties.

8 When they told me about  
9 that, then Bonilla told me that he would  
10 go out to the Home Depot. I believe it  
11 was in Linden, New Jersey, maybe. The  
12 receipt told us which Home Depot location  
13 it was. Yes, it was in Linden, New  
14 Jersey.

15 He went to that store and  
16 had one of the loss prevention officers  
17 download video surveillance that  
18 corresponded to the purchase of these zip  
19 ties. Information on the receipt,  
20 basically, identifies the register where  
21 this transaction took place. There was a  
22 self-checkout line.

23 So, they were able to hone  
24 in right on this exact self-checkout line  
25 at that time. The detective got the

1 L. GERDES, ESQ.

2 video and got stills printed from the  
3 video, which captured Mena and Dickinson  
4 buying the zip types.

5 The purchase of these zip  
6 ties was made a mere 36 hours before the  
7 victim is abducted. These were large zip  
8 ties. They weren't just, you know, small  
9 12-inch zip ties. They were industrial  
10 grade zip ties that are the kind that you  
11 would want to use to bind a person.

12 If you want to talk to me  
13 about other uses for them, yes, I'm sure,  
14 because Home Depot is probably not in the  
15 business of selling zip ties to bind  
16 human beings. So, yeah, there could be  
17 other explanations for that.

18 When I saw that, what I was  
19 seeing was evidence that somebody who I  
20 knew was involved in this crime, Jonathan  
21 Mena, was out purchasing zip ties 36  
22 hours prior to Yoshida's abduction with  
23 the man who had the van, the victim, you  
24 know, used to get to the abduction with  
25 that man's van. They purchased nothing

1 L. GERDES, ESQ.

2 else, other than these zip types.

3 I also noticed in the video  
4 that Soto was the driver of the van that  
5 day. It wasn't Mena who was driving the  
6 van. Soto was the driver of the van.  
7 These were the zip ties then that binds  
8 the victim. So, this gave me very, very  
9 probative, relevant and powerful evidence  
10 connecting Soto to this case.

11 Q After 10/20/2011, what  
12 other steps did you take to investigate  
13 the incident on 10/20/2011?

14 A I was urging the detective  
15 to get this video to me quick. To get  
16 the results of this information quickly.  
17 I mean, your client wasn't arrested.

18 Q I understand.

19 A You're asking me what other  
20 steps. So, there was a period from  
21 10/20/11 until 11/7/2011, where we were  
22 seeing, you know, what direction the  
23 evidence pointed us in.

24 Q Absolutely. I'm just  
25 trying to figure out what steps you took

1 L. GERDES, ESQ.

2 along that route to get there. What  
3 investigative steps --

4 A I reviewed the video  
5 surveillance. I knew that this was  
6 Jonathan Mena, because he was wearing the  
7 same jacket that he was arrested in. I  
8 also knew that this was clearly Rafaela  
9 Soto, because he too was wearing the  
10 same, like, jacket sweatshirt thing that  
11 he wore to the police precinct on  
12 10/21/11. So, I was able to compare  
13 those two.

14 So, I have him with the  
15 person who does the abduction in the car  
16 that gets them to the scene of the  
17 abduction. I also have the fact that,  
18 you know, I know that the deal has fallen  
19 through. That he is still looking for a  
20 buyer and he doesn't have a deal. I  
21 reviewed the subpoenas. You're asking me  
22 a general question.

23 Q No, I'm not. It's not a  
24 general question. I just need to know  
25 the steps. I don't want to know what you



1 L. GERDES, ESQ.

2 knew.

3 A I'm listing those. I'm  
4 reviewing this evidence.

5 Q Absolutely.

6 A That's a step. My review  
7 is a big part of this.

8 Q I must have misunderstood  
9 you then, because I heard you say, I knew  
10 that he did X, Y, Z, because of something  
11 else. I just want to know the steps you  
12 took. That's it.

13 A I'm trying to tell you  
14 that.

15 Q I apologize.

16 A No problem. So, I then saw  
17 text messages between Mena and Soto that  
18 were from Mena's telephone, and that  
19 indicated to me about his wife and the  
20 baby. It also indicated -- you know, I  
21 reviewed the text message where Mena told  
22 him -- when I say, "reviewed," I'm seeing  
23 how these pieces of evidence fit together  
24 with what we know.

25 Again, I know from what

1 L. GERDES, ESQ.

2 Mena -- excuse me. From what Dickinson  
3 is telling us, there is a third person  
4 involved. I know from the victim that  
5 there is only one person who knew both  
6 his address and the \$100,000 in the safe.  
7 I know that the car used belongs to Soto.

8 Through my review of  
9 everything, I know that Soto purchased  
10 the zip ties. Soto is the one who was  
11 ringing them up at the register, too. It  
12 wasn't Mena ringing them up at the  
13 register. Soto is the one who rang them  
14 up and paid for them. Soto is the one  
15 who then -- it's his van that they're  
16 getting in.

17 I reviewed the text  
18 messages where Mena is telling Soto, I  
19 found a tiguere who can go over there  
20 with me. I told him, you know, he's only  
21 getting ten, because I'm getting twenty.

22 Q I apologize. Do you speak  
23 Spanish?

24 A No.

25 Q Go ahead.

1 L. GERDES, ESQ.

2 A I took Spanish in high  
3 school, but I'm not, like, fluent or  
4 anything like that. Detective Bonilla  
5 speaks a little bit of Spanish. Then, I  
6 was also looking on, like, Urban  
7 Dictionary on the computer.

8 There's, you know, what are  
9 Puerto Rican slang words, or different  
10 things like that. I was talking to other  
11 people who speak Spanish who were  
12 specifically Puerto Rican or Dominican,  
13 and talking to people about what this  
14 word means.

15 Basically, it means, like,  
16 a -- it has a negative connotation. It  
17 doesn't mean, like, I have a new employee  
18 or a new businessman. In the context of  
19 people who are Dominican and Puerto  
20 Rican, it's, like, a downhome, dirty dude  
21 who will go over there and, like, take  
22 care of business.

23 Q We are going to go over  
24 each of the text messages and talk about  
25 what you gleaned from each one. So you

1 L. GERDES, ESQ.

2 done.

3 A I'm done.

4 Q Can you tell me what that  
5 document is?

6 A This is a Home Depot  
7 receipt that was found. My understanding  
8 from the police is that this was found in  
9 Soto's van, along with a Home Depot bag.  
10 Like, the store shopping bag. You know,  
11 the little brown plastic bag. Also, with  
12 this was the packaging for two packs of  
13 24 zip ties.

14 On the video, I could see  
15 that -- you can see what Soto has in his  
16 hand. It's, essentially, you know, the  
17 same length of the packaging and the zip  
18 ties and the receipt confirms that those  
19 are the 24-inch zip ties.

20 Q On this receipt, does it  
21 indicate whether or not this purchase was  
22 paid for in cash or with a credit card?

23 A It looks like cash.

24 Q Now, if you were looking at  
25 this receipt in a vacuum, would you be

1 L. GERDES, ESQ.

2 able to tell from this receipt who  
3 purchased the zip ties?

4 A Just this by itself, if I  
5 look at this?

6 Q Yes.

7 A No. With the video  
8 surveillance, I believe, it showed Soto  
9 taking, actually, the money out of his  
10 pocket and making the purchase.

11 Q My next question about this  
12 receipt is: Can you tell from this  
13 receipt what the brand name of the zip  
14 ties are?

15 A At the time, I think, I  
16 looked this up on the internet on Home  
17 Depot. I had gone to their website and,  
18 I think, that this stood for natural tie.

19 Q Did you ever go to Home  
20 Depot to get a sample or to purchase the  
21 zip ties that are reflected on this  
22 receipt to compare them to the ones that  
23 were recovered from the scene of the  
24 incident?

25 A No, I did not.

1 L. GERDES, ESQ.

2 Q Did you direct anyone to do  
3 that?

4 A No, I did not.

5 Q Do you know if any of the  
6 detectives went to Home Depot to do that?

7 A Whether or not they took a  
8 zip tie from the scene and asked Home  
9 Depot if this zip tie was their zip tie?

10 Q Or compared it to the ones  
11 that were on the shelf.

12 A Well, what I did was, I  
13 looked at the video surveillance, which  
14 shows the zip ties in Soto's hand, the  
15 pack of zip ties.

16 So, you see the length.  
17 You see what the packaging looks like.  
18 It was clear packaging. You see that the  
19 packaging was, basically, the same size.  
20 When I say, "size," the length of the zip  
21 tie.

22 Then I, myself, when I was  
23 at the precinct, saw those zip ties. I  
24 didn't see any serial numbers on the zip  
25 ties or any stamps on the zip ties that

1 L. GERDES, ESQ.

2 said Home Depot, but I was able to do,  
3 myself, a visual comparison of what Soto  
4 had in his hands at the register.

5 Knowing that it was two  
6 bags, also. Knowing then that two bags  
7 were found in the van, two empty bags,  
8 with the receipt, with the Home Depot  
9 bag. You see them walking out with the  
10 Home Depot bag.

11 So, you know, it's not like  
12 they just walked out, oh, we don't need a  
13 bag for these. They put them in a Home  
14 Depot shopping bag and walked out. They  
15 take the receipt, put the receipt in the  
16 bag and walk out with those items. So, I  
17 did a visual comparison of what I saw  
18 Soto purchase versus the zip ties that  
19 the police recovered.

20 Q So, the answer would be  
21 that you don't know if the detectives  
22 went to Home Depot to compare the zip  
23 ties that were recovered to the ones that  
24 Home Depot actually sells?

25 A Correct.

1 L. GERDES, ESQ.

2 people are?

3 A Not in that photograph.

4 That's not them though, because this

5 (indicating) is the FedEx van, and

6 they're in this van (indicating.)

7 Q Showing you what has been

8 marked as Defendant's Exhibit M, do you

9 recognize this document?

10 A I do.

11 Q Is this also a still from

12 the video?

13 A Correct.

14 Q In this particular

15 photograph, can you tell who the people

16 are that are depicted there?

17 A I can tell about the

18 jacket. That this is the exact same

19 jacket that Mena was arrested in. It's a

20 distinct jacket. You can see the black

21 in the hood. This isn't the best

22 picture. This other one --

23 Q We'll talk about that one

24 in just a minute.

25 A Okay.



1 L. GERDES, ESQ.

2 Q My question is: Do you  
3 recognize the two people in that  
4 photograph?

5 A Yeah. This (indicating) is  
6 Mena and this (indicating) is Soto.

7 Q Before Mr. Soto's arrest,  
8 had you ever met Mr. Mena or Mr. Soto?

9 A No.

10 Q Are there any facial  
11 features that you recognize in Exhibit M?

12 A Are you just asking me,  
13 just looking at this photo by itself, and  
14 not knowing anything about the case that  
15 I know, and not knowing that I have seen  
16 all of the video surveillance in its  
17 entirety, and that I've seen other  
18 pictures than just this?

19 Are you asking me, if I  
20 just look at this, can I tell you looking  
21 at the back of this person's head that it  
22 was Mr. Mena? No, I cannot tell you  
23 that.

24 Q That's what my question  
25 was.

1 L. GERDES, ESQ.

2 A Right, but there was lots  
3 of still images from the video. I  
4 watched the video countless times. I  
5 paused it. You know, I could zoom, you  
6 know, if I copied the image.

7 There's better video that  
8 shows even the jacket that Soto is  
9 wearing and his hairline. When you  
10 compare, like, his jacket, his hairline,  
11 and his size in relation to Mena's size,  
12 and that they're getting into the FedEx  
13 van, it's very clear that this is them.

14 Also, even when Mr. Soto  
15 testified in the Grand Jury, I showed him  
16 these pictures. He, very quickly,  
17 identified himself as this being him in  
18 the still and this being Mr. Mena.

19 Q You said that you saw a  
20 copy of the Grand Jury minutes?

21 A Correct. So, he knew right  
22 away that that was him. He knew right  
23 away that -- he had no trouble  
24 identifying himself in the picture along  
25 with Mr. Mena.

1 L. GERDES, ESQ.

2 different angles.

3 Q We'll watch the video in a  
4 little while.

5 A Then it was the FedEx van.  
6 This was, like, a leather jacket, a black  
7 leather jacket, with the black hood that,  
8 kind of, hung out, which was the exact  
9 same thing that he was wearing when he  
10 came to the precinct on 10/21 and was  
11 photographed.

12 Q I'm looking at these photos  
13 myself and they look to be a bit fuzzy.  
14 You're saying that this is a black  
15 leather jacket. So, my question is: How  
16 can you tell it's a black leather jacket,  
17 other than it has --

18 A There was other pictures  
19 where you could see that it was what I  
20 thought was leather.

21 Q Again, that would be shown  
22 in the video?

23 A I don't know if it was in  
24 the video or still.

25 Q As to Exhibit N, can you

1 L. GERDES, ESQ.

2 transcript. I only got to watch part of  
3 the video, but I didn't get to re-watch  
4 the part where he talks about Soto. I  
5 just got interrupted. I had a pretty  
6 crazy last few days of work.

7 Q When you learned that they  
8 covered the plates with another plate,  
9 and you believe that was because they  
10 didn't want it to be traced back to Soto,  
11 did you instead think that maybe they did  
12 that so that no one would find out who  
13 they were instead of who Soto was?

14 A Yes. But, at the same  
15 time, it's not like -- when you think of  
16 possibilities, you have to think about  
17 why something may be more likely than  
18 another. Why is one explanation more  
19 likely than an alternative explanation?

20 Q We have the video and the  
21 text messages. If I'm not mistaken, I  
22 believe that those were the only other  
23 things that you reviewed prior to his  
24 arrest; is that correct, that we haven't  
25 gone over yet, or am I wrong?

1 L. GERDES, ESQ.

2 A No. I think you're right.

3 Q Let's go over those. Then  
4 we can talk about why you drew certain  
5 conclusions.

6 A Okay.

7 Q When did you first come  
8 into receipt of text messages between  
9 Rafael Soto and Jonathan Mena?

10 A At some point prior to his  
11 arrest.

12 Q I am going to show you  
13 documents that were marked yesterday at  
14 the plaintiff's deposition. They're  
15 dated 1/15/2014. They're marked O, P, Q,  
16 R, S, T, U, and P-1.

17 MR. MOUTON: Why was this  
18 marked P-1?

19 MR. FRANCOLLA: I don't  
20 know why she did it that way,  
21 but I think she marked it and  
22 then marked it afterwards.

23 Q I'm going to ask you to  
24 look at these exhibits collectively, and  
25 let me know when you're done.

1 L. GERDES, ESQ.

2 A Okay. I can tell that  
3 these are all text messages from Mena's  
4 telephone.

5 Q Now, from these text  
6 messages, can you tell me which text  
7 messages from those exhibits that you  
8 relied on in coming to any other  
9 conclusions that you told me; that Rafael  
10 Soto needed money, that he had children  
11 on the way, that he had engaged someone  
12 to rob Mr. Yoshida for \$10,000 or  
13 \$20,000?

14 MR. FRANCOLLA: Just for  
15 the record, the binding that  
16 you just took off of P-1,  
17 those are not individually  
18 Bates stamped. To the extent  
19 that any of those are things  
20 that you want to take out, we  
21 should probably mark that, as  
22 well, so we know.

23 MR. MOUTON: Sure.

24 MR. FRANCOLLA: That's  
25 just for the record.

1 L. GERDES, ESQ.

2 MR. MOUTON: Do you want  
3 to do what we just did before  
4 with the Bates numbers?

5 MR. FRANCOLLA: They're  
6 not Bates stamped, because you  
7 just got them yesterday.

8 MR. MOUTON: That's right.

9 MR. FRANCOLLA: That's the  
10 only reason I'm saying that.  
11 If there is anything in that  
12 pile, let's just make sure  
13 that we know --

14 THE WITNESS: I'm missing  
15 a date and a time. We would  
16 know which one, because we put  
17 the same date in the contents.

18 A So, the way that I came to  
19 learn about any text messages was that  
20 one of the detectives took the phone to  
21 TARU, and TARU then downloaded the  
22 contents. They call it, like, a phone  
23 dump. They put the contents of the phone  
24 onto a CD. Then, also, they generated a  
25 report.

1 L. GERDES, ESQ.

2 In the report, it lists the  
3 way that somebody has their contact  
4 information stored. Like, in this case,  
5 "Be Bless" corresponded to the phone  
6 number that everyone was saying belonged  
7 to Rafaela Soto.

8 Now, Detective Bonilla  
9 brought -- TARU gave a CD and a report  
10 to, I believe, Detective Bonilla. I  
11 don't know if there was maybe another  
12 detective who he assigned that task to.  
13 TARU generates a CD and report.

14 I then am given a copy of  
15 the report and a copy of the CD. On the  
16 CD, I reviewed text messages prior to  
17 Soto's arrest that corresponded to his  
18 contact with Mena, I think, from, like,  
19 the 18th and the 19th, or maybe the 17th,  
20 18th, or 19th. Really, like, a couple of  
21 days leading up to the arrest.

22 I think I started closest  
23 in time to the incident. Then, I saw a  
24 text -- before I looked at things,  
25 Bonilla, I believe, or an officer led me



1 L. GERDES, ESQ.

2 to believe, that there is a text message  
3 where they're possibly discussing the  
4 payments and who is getting what amount  
5 of money. So, it's not as if I looked at  
6 the CD blind, not knowing if there is  
7 anything relevant on it.

8 Q Do you recall who that was  
9 who told you that?

10 A I think it was Bonilla. I  
11 think.

12 Q Why don't we just go  
13 through each one, and you can tell me  
14 what they meant when you read them, or  
15 what you thought they meant when you read  
16 them. So, we're looking at which one?

17 A I'll put them in order.

18 MR. FRANCOLLA: Letter  
19 order is probably the easiest  
20 way.

21 A There were two key text  
22 messages, after I looked at this, that  
23 really stood out to me. The first being  
24 Defendant's Exhibit Q. The second being  
25 Defendant's Exhibit T.

1 L. GERDES, ESQ.

2 Q Are there any other text  
3 messages that you have that you believed  
4 were important? The only reason why I'm  
5 asking you is, I'm asking you that so  
6 that we can narrow what we talk about  
7 down.

8 A I also saw this text  
9 message, Defendant's Exhibit U, about his  
10 wife in surgery. I thought that there  
11 was a text message that he was, like,  
12 waiting at the hospital or something.  
13 Waiting for the doctor since 5:00 a.m.

14 This is in this other  
15 stack. This is Defendant's Exhibit P-1.  
16 This is dated October 18, 9:43 a.m. It's  
17 from "Be Bless" to "Me," which is Mena.  
18 It says, "I'm at the hospital with my  
19 wife. She's having contractions. The  
20 doctor's on her way, since 5:00 a.m."

21 So, this is telling me that  
22 his wife is in a health predicament.  
23 Like, they're having a baby. You know,  
24 that he's with her at the hospital.

25 Q I'm sorry. You classify

1 L. GERDES, ESQ.

2 having a baby as a health predicament?

3 A Well, because I think I saw  
4 the other one about his wife recovering  
5 from surgery. So, this led me to believe  
6 that it wasn't so routine.

7 Q Would you consider a  
8 C-section surgery?

9 A Of course. Let's start  
10 over. I believe that his wife gave birth  
11 to a child at some point between October  
12 18th, at 9:43 and October 19th, at 9:17  
13 p.m. That it was not necessarily a  
14 routine labor.

15 I'm not married. I don't  
16 have a child. So, that his wife is going  
17 to be out of commission for a few weeks,  
18 and that he's at the hospital.

19 Q Well, let me ask you  
20 this --

21 A You're not letting me  
22 finish.

23 Q Okay.

24 A Let me continue to finish.  
25 So, I'm seeing this. An explanation is

1 L. GERDES, ESQ.

2 that he is unavailable to do this  
3 robbery, because he's sitting bedside  
4 with his wife. That's maybe why he  
5 didn't go do this with Jonathan Mena.  
6 That's one plausible explanation.

7 I'm sure you can give me an  
8 alternative. Yes, there's different ways  
9 to interpret this. As I'm seeing this,  
10 he would be -- given that his wife had a  
11 baby at some point in this 24-hour  
12 period, she would not have been  
13 discharged from the hospital.

14 That there was a surgery.  
15 She would not have been discharged to go  
16 home as of the time of this crime. So,  
17 I'm thinking he's unavailable to go  
18 commit this crime. He's bedside with his  
19 wife.

20 I'm next seeing a text  
21 message, Defendant's Exhibit P, where  
22 Soto asks Mena, "Are you trying to  
23 deliver bread?" Then Mena writes back, a  
24 minute later, Defendant's Exhibit Q, "No,  
25 bro. I'm at home. I'm just waiting on

1 L. GERDES, ESQ.

2 you for the other thing. All the bread  
3 shit we can cover tomorrow." So, the way  
4 I'm interpreting this is that Mena is  
5 waiting on Soto for something unrelated  
6 to the bread route, the bread business at  
7 that time.

8 Then at 8:44, Defendant's  
9 Exhibit T, Mena is telling Soto this  
10 message that is written in Spanish, "I  
11 got a dude." Again, I spoke about what I  
12 learned to be the Dominican or Puerto  
13 Rican connotation for this word  
14 "tiguerre," T-I-G-U-E-R-E. "I got a dude  
15 who can go over there with me."

16 Over there, somewhere other  
17 than New Jersey. Not you can do this  
18 something here with me. Who can go over  
19 there with me. So, he's telling Soto  
20 he's going somewhere with somebody else  
21 that's not in New Jersey. "I told him  
22 he's only going to get ten, because I am  
23 only getting twenty."

24 I had known what Pablo  
25 Dickinson said. That, you know, he

1 L. GERDES, ESQ.

2 believed he was getting twenty, basically  
3 dealing with the same amounts and the  
4 same division. Then, you have Soto's  
5 response back, talking about, "I think  
6 \$10 an hour is fair. Please let him know  
7 that it's only for a couple of weeks  
8 until my wife recovers from surgery."

9 You already had Mena  
10 telling him that he was waiting on him  
11 for the thing, unrelated to the bread  
12 route. So, they're engaged in a  
13 conversation that isn't pertaining to the  
14 bread route, and this text message is  
15 coming eight to nine hours before this  
16 victim is abducted.

17 So, when I know the  
18 connotation for what "tiguerre" is, when I  
19 know that this is a job that Mena feels  
20 is so important to update Soto that he's  
21 got this dude who can do the job with  
22 him, that's the -- you know, knowing what  
23 I know about the zip ties, knowing what I  
24 know about him still looking for a buyer  
25 for the route, knowing that he's

1 L. GERDES, ESQ.

2 unavailable to commit this crime with  
3 Mena, because he's helping his wife at  
4 the hospital, knowing that he's the only  
5 one who knows those two key pieces of  
6 information -- the victim's address and  
7 the \$100,000 in the safe. He's the only  
8 one who knows both of those.

9 Remember, the victim never  
10 told Mr. Route that -- although these  
11 transactions are in cash, he never told  
12 Mr. Route that the money was in a safe,  
13 and that's what these people were  
14 demanding.

15 Q Let's just do this one at a  
16 time.

17 A Sure. Remember, I told you  
18 that I reviewed text messages for the two  
19 days. When Mena is talking to Soto and  
20 referring to, say, \$20, this text message  
21 clearly shows how he wants to refer to  
22 \$20.

23 This is a text message from  
24 October 18, 9:49 a.m., where when Mena  
25 wants to say \$20, U.S. currency, he puts

1 L. GERDES, ESQ.

2 the dollar symbol and writes "20." He  
3 has no problem expressing \$20.

4 Q You're assuming that was  
5 his practice from that one text message?

6 A Well, these were -- when we  
7 say, "one text message," these were two  
8 text messages sent within a 24-hour  
9 period.

10 Q Right. So, obviously, it  
11 wasn't his pattern and practice, as you  
12 just testified, to do that, because  
13 he, in fact, did it a different way, in  
14 possibly another text message; is that  
15 correct?

16 A But in this one he's  
17 saying -- they're talking about no gas in  
18 the van. This is a very different tenor  
19 to this text message.

20 Q Let's just go through each  
21 of these text messages one by one.

22 A Okay.

23 Q Defendant's Exhibit O, can  
24 you tell me what that says in English?

25 A You want me to translate



1 L. GERDES, ESQ.

2 it, you're saying?

3 Q Yes.

4 A I can't right now. I had  
5 the translations done.

6 Q It's in Spanish?

7 A Yes.

8 Q Can you flip over to the  
9 next one?

10 A Okay.

11 Q That's Exhibit P?

12 A Correct.

13 Q That's from "Be Bless" to  
14 Mena?

15 A Correct.

16 Q It says, "You're trying to  
17 deliver bread"?

18 A Correct.

19 Q Let's go to the next one.  
20 We already covered that one.

21 A I remember "tato" means  
22 okay.

23 Q Can you tell me what  
24 Defendant's Exhibit S says?

25 A This was something to the

1 L. GERDES, ESQ.

2 effect that I talked to Lo's and he said  
3 something. I forget if this means after  
4 or before five, but I definitely knew  
5 what this meant. Well, as far as the  
6 translation.

7 Q Did you ever find out who  
8 Lo's was?

9 A Well, I know what Mena said  
10 at trial as to who Lo's was.

11 Q Who?

12 A He said that he was a  
13 person who was going to be working the  
14 route, essentially. Like, taking his  
15 place.

16 Q Taking whose place?

17 A Taking Mena's place.

18 Q Did you ever learn before  
19 Mena was arrested that the Lo's meant  
20 Carlos?

21 A No.

22 Q Did you inquire into who  
23 Lo's was?

24 A I believe I knew. I saw  
25 that there was a Carlos whose phone

1 L. GERDES, ESQ.

2 number -- at some point, I don't know  
3 when, I saw that there was a Carlos  
4 stored -- maybe stored in one of the  
5 phones on the report or something.

6 Q That was before --

7 A But I didn't know that this  
8 meant Carlos when I looked at this. I  
9 didn't know that this meant Carlos until  
10 Mena testified.

11 Q But you knew that they were  
12 referring to --

13 A It says, "Lo's." No, I  
14 didn't really know that this was  
15 referring to, like, a named man. It  
16 says, "Lo's." I didn't really know what  
17 that meant.

18 Q Let's go to the next one.  
19 I think you testified about Defendant's  
20 Exhibit T; correct?

21 A Yes.

22 Q That you took from that  
23 that someone was going to get ten for  
24 something that was unrelated to the bread  
25 route, and Mena would get twenty?

1 L. GERDES, ESQ.

2 A Correct.

3 Q Is it indicated in that  
4 text message that it was \$10,000, or  
5 \$20,000, \$10, \$20?

6 A No.

7 Q Let's go to the next one.  
8 In that text message, Defendant's Exhibit  
9 U, can you tell me who that's to and who  
10 that's from?

11 A From Soto to Mena.

12 Q Is that text message in  
13 response to Defendant's Exhibit T? Is  
14 that the next text message that was sent  
15 to Mena from Rafael Soto?

16 MR. FRANCOLLA: Objection.

17 If you know.

18 A I don't know.

19 Q Does it appear that way?

20 A I can tell you that this  
21 (indicating) was sent at 8:44, and then  
22 this (indicating) was sent at 9:17. As I  
23 sit here today, do I know if any other  
24 text messages were sent in between? No,  
25 I don't know.

1 L. GERDES, ESQ.

2 Q Fair enough. The police  
3 did a phone dump; is that correct?

4 A Correct.

5 Q That phone dump has all the  
6 text messages that were recovered from  
7 the cell phone; is that correct?

8 A That's not correct.

9 Q It does not?

10 A Correct.

11 Q Does it have all the text  
12 messages between Mena and Rafael Soto?

13 A I don't know the answer to  
14 that.

15 Q Does it have all the text  
16 messages between --

17 A Here's what happened. When  
18 I was preparing for trial against Mena, I  
19 had all of their phone records then at  
20 that point. As I was looking at their  
21 phone records, I could see that there  
22 were text messages on the phone records  
23 that I did not have copies of from that  
24 disk.

25 I called TARU and I said to

1 L. GERDES, ESQ.

2 TARU, like, look, when you guys generally  
3 do these phone dumps, do you put all of  
4 the texts on the disk? They're like  
5 yeah, that's the general practice.

6 So, then I realized that  
7 definitely wasn't what happened here,  
8 because the likelihood of all the texts  
9 on Mena's phone being between him and  
10 Soto and no one else was slim to none.

11 Q Sure.

12 A So, I realized then that  
13 this is all that I had. Then, I also  
14 realized that when I looked at the phone  
15 records there were definitely, you know,  
16 texts where it was saying that Mena was  
17 either receiving or sending a text, and I  
18 didn't have one that corresponded to that  
19 date and time.

20 So, then I got a second  
21 search warrant. This is while we're in a  
22 trial part. I think even practically  
23 while the trial was going on, we might  
24 have been mid-trial when I realized this.  
25 So, then I had permission to go back into

1 L. GERDES, ESQ.

2 the phone.

3 When I went back into the  
4 phone, I could clearly see then that  
5 there were text messages between Mena and  
6 other parties. What I can't remember is  
7 if there were any more between Mena and  
8 Soto, other than what I have. I honestly  
9 can't remember that.

10 Q At the time of Soto's  
11 arrest, what we have here today with  
12 Exhibits P-1, O, Q, R, S, T, and U, those  
13 are the ones that you had that were  
14 available to you?

15 A Well, I don't know how you  
16 generated this.

17 THE WITNESS: Is this the  
18 disk that I gave you printed  
19 out?

20 MR. FRANCOLLA: Yes, I  
21 could say that on the record.

22 Exhibit P-1, as well as  
23 Exhibits O through U, are  
24 copies of the text messages  
25 that were on the disk Miss

1 L. GERDES, ESQ.

2 Gerdes provided me yesterday,  
3 which was sent to our copy  
4 center, and then printed and  
5 provided to me, which was then  
6 provided to plaintiff's  
7 counsel. That's my  
8 assumption, yes.

9 A Then, that's what I had pre  
10 Soto's arrest.

11 Q My question then is: If  
12 you look at all of these documents that  
13 you have in front of you, can you tell me  
14 if there appears to be other text  
15 messages that would fall between  
16 Defendant's Exhibit T and U?

17 A These aren't even in order.

18 Q They're not?

19 A No. We go from August 30th  
20 to the 23rd, to September 15th, back to  
21 September 2nd. Yes, it appears that  
22 there are no text messages sent between  
23 the two, you know, in between this time  
24 period, between Defendant's Exhibits T  
25 and U.



1 L. GERDES, ESQ.

2 Q Is it safe to say then that  
3 before Soto's arrest, when you read these  
4 text messages, that you believed or it  
5 appeared to be that Rafael Soto's  
6 response, that's depicted in Defendant's  
7 Exhibit U, was a response to Mena's text  
8 message that is depicted in Defendant's  
9 Exhibit T?

10 A It was the next text that  
11 was sent. I don't feel as though it's  
12 responsive to what Mena sent though.

13 Q Now, in that text message,  
14 we've already covered that Mena mentions  
15 ten, that he's going to pay some ten; is  
16 that correct?

17 A That Mena is?

18 Q Or someone agreed to be  
19 paid ten; is that correct?

20 A Correct. That they're  
21 going to be doing the same thing  
22 together. Some job where they're going  
23 to be working in tandem. That it's going  
24 to be twenty. One's getting paid twenty.  
25 That being Mena. The other one is

1 L. GERDES, ESQ.

2 getting paid ten. That's the person who  
3 he, essentially, brought on who has  
4 agreed to do this with him.

5 Not that this is what he  
6 used to make. It means what I'm getting  
7 for a future job. That some job that is  
8 happening in the future, that is  
9 happening over there. That this isn't a  
10 continual job. This is a one-time thing,  
11 because I'm only getting this. Again,  
12 the context of what that word "tiguerere"  
13 means.

14 Q What led you in that text  
15 message to believe that that was a  
16 one-time job?

17 A Because I knew what had  
18 happened to the victim. I knew that Mena  
19 was a regular employee of Soto. That  
20 Mena was his driver. That Mena was  
21 Soto's driver who did the route. That  
22 this is a payment that he's going to be  
23 getting in the future for something he  
24 does over there. That was the conclusion  
25 that I drew.

1 L. GERDES, ESQ.

2 Q My question is a little bit  
3 different from your answer.

4 A Sure.

5 Q My question is not what  
6 influenced your decision to construe the  
7 text message the way that you construed  
8 it, but rather what in that text message  
9 made you believe that it was only for a  
10 one-time job?

11 A Because I'm knowing what I  
12 know about what Pablo Dickinson said.  
13 That he's getting \$20,000.

14 Q So is your answer that --

15 A That Mena is getting some  
16 portion, also. So, I'm knowing what  
17 Pablo has told me, and that somebody else  
18 is getting the rest. So, the fact that  
19 it's important for Mena to tell Soto that  
20 he's -- it's like the three of them are  
21 talking about this.

22 Knowing what I know about  
23 Pablo Dickinson, Pablo Dickinson is not  
24 an employee who they would want to hire  
25 to, you know, drive the route for them.

1 L. GERDES, ESQ.

2 They know Pablo Dickinson. They know  
3 he's a drug dealer. A bad guy.

4 So, the person who I know  
5 he recruited, because Pablo had told us,  
6 you know, that Mena had called him  
7 earlier in the night, and that he agreed  
8 to do it. Then that Mena was going to  
9 call him to pick him up. So, the time  
10 that he was doing this was, like,  
11 basically, falling in line, because we  
12 spoke to Pablo first.

13 It was falling in line with  
14 exactly what Pablo had told us. That he  
15 had been recruited by Mena to go over  
16 there, to go to Brooklyn. That he's a  
17 downhome, dirty criminal. That's the  
18 only reason they asked him, out of all  
19 the friends and acquaintances they had.  
20 That's why he was recruited.

21 That he was going to be  
22 getting 20,000. You know, it's the same  
23 division of money. That there was this  
24 third person who was going to be getting  
25 the rest. So, when I see this, when I

1 L. GERDES, ESQ.

2 know that Mena has just recruited an  
3 accomplice, it's, essentially, him  
4 telling Soto, look, I just got my  
5 accomplice. We're set.

6 He's saying, you're with  
7 your pregnant wife at the hospital. You  
8 can't do this. I got somebody. I got a  
9 downhome dude who will go over there and  
10 commit this crime with me. I told him  
11 about the payments. He's on board. That  
12 you're going to still get your money,  
13 basically.

14 Q When Soto says, "I think  
15 \$10 an hour is fair," that didn't  
16 register in your mind that that meant \$10  
17 an hour and not \$10,000?

18 A There never needed to be --  
19 Jonathan was the driver. It's not like  
20 Soto worked for the route. As you have  
21 said, you know, Soto wasn't hands on  
22 every day taking a payment. Jonathan was  
23 his worker. Jonathan was his driver.

24 So, the fact that Soto was  
25 out of commission, it didn't affect

1 L. GERDES, ESQ.

2 Jonathan from being able to do the route.

3 It's not like Jonathan's wife was the one

4 who had the baby so that he's hiring

5 someone to fill his place. Because this

6 is only temporary, that person is going

7 to get less than what he got. You know,

8 the fact that Soto -- yeah, this is

9 totally nonresponsive and smart.

10 That's why I thought, like,

11 Soto was, you know, very smart in how

12 this crime was committed. The license

13 plate thing not coming back to him. You

14 know, him not ultimately being the one

15 who went over to do this. You know, him

16 wanting to get his van back from the

17 precinct as quickly as possible so the

18 police might not be able to find those

19 Home Depot receipts.

20 Q Now, let me ask you this:

21 If Jonathan Mena had been planning to

22 move to Virginia and meet with someone to

23 take over for him before Soto was able to

24 take over the route, would that have been

25 a reasonable explanation for that?

1 L. GERDES, ESQ.

2 A No, because then that would  
3 have been a permanent job. That wouldn't  
4 have been only for a couple of weeks.

5 Q Why wouldn't it have --

6 A Because the route. Who is  
7 going to continue to drive the route?

8 Q What if I told you that  
9 Rafael Soto had intentions of taking over  
10 the route himself because he had found  
11 out that Mena had been stealing money  
12 from his business?

13 MR. FRANCOLLA: Objection.  
14 Is there a question?

15 MR. MOUTON: Yes.

16 MR. FRANCOLLA: That  
17 wasn't a question.

18 A I mean, I know what Soto  
19 said in the Grand Jury. It sounds like  
20 you maybe know bits and pieces of what he  
21 said. There was no evidence before me  
22 that suggested Mena was moving to  
23 Virginia.

24 Q Well, the reason why I'm  
25 asking you is because you're saying that

1 L. GERDES, ESQ.

2 he said, I think \$10 an hour is fair, and  
3 you thought that was a smart and slick  
4 thing that he did.

5 My question to you is: Did  
6 it ever occur to you that maybe you were  
7 attributing the wrong definition or  
8 translation to what Mena sent to Rafael  
9 Soto, and that it could possibly be, in  
10 fact, that he was saying \$10 an hour?

11 MR. FRANCOLLA: Objection.

12 A So, what you're trying to  
13 suggest is that Rafael Soto planned to  
14 become the driver of this route?

15 Q I'm asking you: If I told  
16 you those things; that Mena had plans to  
17 move to Virginia, that Rafael Soto knew  
18 that he was stealing from his route, and  
19 that he had planned to fire him anyway,  
20 and that he wanted to bring someone else  
21 on to learn the route, because he didn't  
22 know it, temporarily, while his wife was  
23 out of commission, and that he agreed to  
24 pay the gentleman who was taking over,  
25 Carlos, who was mentioned in the previous



1 L. GERDES, ESQ.

2 text, \$10 an hour, would that be a  
3 reasonable explanation as to this series  
4 of text messages?

5 MR. FRANCOLLA: Objection.

6 A No, because your client  
7 also said that the route was sold. So,  
8 if the route is sold, what do they care  
9 about bringing on a new driver?

10 Q If the route hadn't been  
11 sold, would it have been reasonable?

12 MR. FRANCOLLA: Objection.

13 A No, again, it wouldn't,  
14 because then if he's firing Mena because  
15 he's a thief, and moving to Virginia,  
16 Carlos, this new, you know, hypothetical  
17 employee, would then become a full-time  
18 worker. He wouldn't only be working for  
19 a couple of weeks.

20 Q If Rafael Soto himself was  
21 going to then take over the route, would  
22 he not be working only for a few weeks?

23 MR. FRANCOLLA: Objection.

24 A The same Rafael Soto that  
25 you said was working a full-time job at

1 L. GERDES, ESQ.

2 FedEx, and also the same Rafael Soto who  
3 you said didn't know anything about the  
4 route?

5 Q Certainly.

6 A No, it wouldn't make any  
7 sense.

8 Q Let me put it this way.  
9 Yesterday, Mr. Soto testified that he  
10 was, in fact, leaving FedEx because he  
11 needed to take care of these routes so  
12 that he could then purchase a FedEx  
13 route, and that he had plans to do that,  
14 and, again, that he had found out that  
15 Mena had been stealing from him.

16 So, he wanted to take over  
17 these routes and learn them so that he  
18 could know who the customers were, find  
19 out who they were and how much he was  
20 bringing in. That way he could sell the  
21 route, but that at this particular  
22 juncture his wife was pregnant and was  
23 about to have a baby. So he needed a  
24 temporary worker.

25 A That's why it doesn't make

1 L. GERDES, ESQ.

2 any sense, because when your client  
3 testified before the Grand Jury, he said  
4 that his route was sold. If his route is  
5 sold, there is no need for him to worry  
6 about his thieving employee hiring a new  
7 employee. That becomes the new buyer's  
8 problem. No, that doesn't make sense.

9 Q That was something that you  
10 learned at the Grand Jury?

11 MR. FRANCOLLA: What was  
12 something that she learned?

13 Q That was something that was  
14 said at the Grand Jury, and that's when  
15 you first learned that?

16 A He said that there was a  
17 buyer in place.

18 Q "A buyer in place"?

19 A Right. What I knew at this  
20 stage, when I was reviewing these texts,  
21 was that Soto did not participate in the  
22 daily operations of the route. So, the  
23 fact that Soto's wife was going to be out  
24 of commission, as she recovered from  
25 surgery, that would not have impacted the

1 L. GERDES, ESQ.

2 daily operations of the route, because  
3 Soto was not involved in the daily  
4 operations of the route.

5 Q But Mena moving would have;  
6 is that correct?

7 A No.

8 Q It wouldn't have impacted  
9 the daily operations of the route?

10 A Clearly, Soto was a  
11 hands-off owner, because he couldn't even  
12 bother to get this information to the  
13 prospective buyer.

14 Q My question isn't about  
15 those particular documents or what  
16 information he provided.

17 My question is: If Mena is  
18 the only employee and he knows everything  
19 about the route, and he's the one who  
20 runs the route, if he moved, that would  
21 not impact the operation of the bread  
22 route?

23 A If Mena moved, that would  
24 impact the operation of the bread route,  
25 but there was no evidence before me that

1 L. GERDES, ESQ.

2 Mena had any intention on moving, nor did  
3 your client at any time when he -- to my  
4 knowledge, when he spoke to Detective  
5 Bonilla, you know, in the days leading up  
6 to his arrest, did he ever tell Detective  
7 Bonilla that Mena was moving to Virginia?  
8 I understand that they had a few phone  
9 conversations.

10 Q Phone conversations with  
11 detectives and people who call into a  
12 precinct, are they recorded?

13 A Not to my knowledge.

14 Q Are telephone conversations  
15 between people at Rikers Island and the  
16 people they call recorded?

17 A Some of them.

18 Q What would trigger a  
19 recording?

20 A You would have to speak to  
21 somebody at Rikers Island about that.

22 Q What about when someone  
23 meets someone in person at Rikers Island,  
24 is there a microphone placed somewhere  
25 and a recording made?

1 L. GERDES, ESQ.

2 A Not to my knowledge.

3 Q Have you ever been  
4 pregnant?

5 MR. FRANCOLLA: Objection.

6 No, you're not answering  
7 that question.

8 A I've never been pregnant.

9 Q Have you ever had a  
10 Cesarean section?

11 A No, but I had friends who  
12 had.

13 Q You testified earlier that  
14 you would classify that as surgery; is  
15 that correct?

16 A Yes.

17 Q You indicated earlier that  
18 that was something serious, but not  
19 necessarily. It could have been a number  
20 of things that you could have attributed  
21 it to, the fact that she was having  
22 surgery; is that correct?

23 MR. FRANCOLLA: Objection.

24 A Well, he said that his wife  
25 was in labor in one of the other texts.

1 L. GERDES, ESQ.

2 Q At the time when you read  
3 that, did you believe that she was having  
4 a Cesarean section?

5 A When those two texts are  
6 sent within 24 hours of each other, yes.

7 Q At the time that you read  
8 it, you believed that she was going to be  
9 out for a couple of weeks because she had  
10 a Cesarean section; is that correct?

11 A Yes. Also, with this text  
12 message, you just can't overlook the  
13 timing of it. I mean, this is sent.

14 Again, when you combine all  
15 of this together and you look at the big  
16 picture, when you have this sent about  
17 seven to eight hours before the victim is  
18 abducted, and after he speaks to  
19 Dickinson on the phone, I mean, knowing  
20 what we know about all of the other  
21 circumstantial evidence in this case --  
22 because that's what my job as a  
23 prosecutor is to do.

24 You don't necessarily look  
25 at just one piece by itself and make a

1 L. GERDES, ESQ.

2 decision. You look at all of the pieces  
3 of the puzzle, and you put all of those  
4 pieces that you have before you and  
5 consider it all.

6 You know, while there may  
7 be an innocent explanation for this one  
8 text; maybe he was moving to Virginia,  
9 it's very difficult to say that that's  
10 the most reasonable conclusion that you  
11 should draw when you look at all of the  
12 other evidence and when you look at what  
13 we know. When I looked at everything,  
14 the one naturally flowing, reasonable,  
15 logical conclusion was that he planned  
16 this.

17 Q That conclusion was  
18 something that you had already formed on  
19 October 20, 2011?

20 A Of course not. You never  
21 asked me that question, and I never said  
22 that.

23 Q You stated earlier that  
24 there is an argument to say that on  
25 October 20, 2011, you had probable cause



1 L. GERDES, ESQ.

2 to arrest Rafael Soto.

3 Was it your belief for that  
4 because you believed that at that  
5 particular juncture that there was enough  
6 circumstantial evidence to form probable  
7 cause, and that Rafael Soto had actually  
8 committed the crime?

9 MR. FRANCOLLA: Objection.

10 A I don't know if -- I mean,  
11 we didn't make the arrest that day.  
12 That's the fact. It was very strong and  
13 powerful evidence. I don't know the  
14 answer to that. I don't know if it was  
15 without a doubt probable cause to arrest  
16 that day, but we didn't arrest. So, we  
17 don't have to make that decision.

18 Q Your beliefs and the  
19 conclusions that you came to on the  
20 initial day of the arrest, did that  
21 influence your investigation?

22 MR. FRANCOLLA: Objection.

23 A I mean, of course, when you  
24 learn something. You don't start at  
25 Point A, when you -- or Point Z, when you

1 L. GERDES, ESQ.

2 know everything that happened before. I  
3 mean, what you know does drive an  
4 investigation. It does point you in  
5 different directions. We weren't working  
6 blindly.

7 Of course, what Dickinson  
8 was telling us, the van, you know, what  
9 the victim was telling us about his  
10 conversations with Soto, and the  
11 information he had conveyed to Soto  
12 versus what he had conveyed to Mena,  
13 sure, all of that is playing a role in  
14 why I thought that Soto was involved in  
15 this.

16 Q Now, I'm going to go back  
17 to what was marked as Plaintiff's Exhibit  
18 5.

19 A Sure.

20 Q You looked at these  
21 earlier. Does it appear that this set of  
22 documents contains a lot of documents  
23 that look to be financial in nature?

24 A No. I mean, besides the  
25 Chase Bank, there's bridge tolls. Do you

1 L. GERDES, ESQ.

2 Q Did Mr. Levitt have any  
3 sway in your decision to bring charges  
4 against Mr. Dickinson?

5 A Against Mr. Dickinson?

6 Q I'm sorry. Against Mr.  
7 Soto. I apologize.

8 A Yes. Before he was  
9 arrested, we discussed, you know, what  
10 the evidence was against him.

11 Q What did Mr. Levitt tell  
12 you after you discussed the evidence with  
13 him?

14 A He was in agreement with me  
15 that we had probable cause to arrest.

16 Q Did he direct you to have  
17 Mr. Soto arrested?

18 A I don't know who -- well, I  
19 didn't personally arrest Mr. Soto. I  
20 don't know if we were all in the same  
21 room; Bonilla, me, and Jeff. I can't  
22 remember now, but all three of us were on  
23 the same page that we had probable cause.  
24 That we had more than probable cause for  
25 arrest in this case.

1 L. GERDES, ESQ.

2 Q Was there any one person  
3 who made the decision to arrest Mr. Soto?

4 A No. I think it was that  
5 everyone was in agreement.

6 Q Everyone was in agreement.  
7 Did the three of you together make the  
8 decision that Mr. Soto should then be  
9 arrested?

10 A I don't know who made the  
11 final call. I really don't. No one was  
12 wavering, or no one was suggesting that  
13 we needed more. All three of us were on  
14 the same page when we reviewed all of  
15 this evidence that there was probable  
16 cause to arrest.

17 Q If the Kings County  
18 District Attorney's Office had made that  
19 final decision to make the arrest, would  
20 they have drafted some sort of document  
21 to send to the NYPD to effect the arrest?

22 A No, not to my knowledge.  
23 It wasn't done in this case. I mean, I  
24 don't think -- I'm not familiar with  
25 something like that.

1 L. GERDES, ESQ.

2 Q If you were the person that  
3 directed Detective Bonilla to make the  
4 arrest, would you have called him on the  
5 phone and told him, we have enough  
6 probable cause, so please arrest Mr.  
7 Soto?

8 MR. FRANCOLLA: Objection.

9 Q Or something along those  
10 lines, obviously.

11 A Like I said, I can't  
12 speculate. I don't know who -- I don't  
13 know if we were all in the same room.  
14 You know, I know that at some point, you  
15 know, Bonilla was at our office at  
16 different points in time. I know that I  
17 was in Jeff's office.

18 You know, I don't know if  
19 somebody communicated, you know, yes, go  
20 ahead and make the arrest to Bonilla via  
21 phone. Whether or not that was an  
22 in-person conversation, I don't know the  
23 answer to that.

24 Q Have you ever ordered the  
25 NYPD to arrest someone?

1 L. GERDES, ESQ.

2 District Attorney's Office?

3 MR. FRANCOLLA: Objection.

4 A I don't know what drive the  
5 screening database is considered to be a  
6 part of, because any ADA can sign onto a  
7 screening database. The Complaint  
8 Drafting database, I don't know what  
9 drive that's on.

10 Q Is it fair to say that you  
11 don't know if there is?

12 A I guess so.

13 Q Before Mr. Soto was  
14 arrested, did Dickinson tell you anything  
15 that led you to believe that Rafael Soto  
16 had any direct communications with Pablo  
17 Dickinson prior to the October 20th  
18 incident?

19 A Did Dickinson ever tell us  
20 prior to Soto's arrest that he had direct  
21 contact with Soto? No.

22 Q The second license plate  
23 that you pulled that was on the FedEx  
24 van, Soto's van, do you know whose  
25 license plate that was?

1 L. GERDES, ESQ.

2 A I think it was registered  
3 to, like, a van or a truck in Minnesota.

4 Q Do you know to this day --

5 A I don't think it was ever  
6 reported stolen, to my knowledge. I  
7 don't think, if memory serves me  
8 correctly.

9 Q Do you know to this day who  
10 put the plate on the back of the van?

11 A Pablo Dickinson said that  
12 Mena did that.

13 Q Do you to this day know  
14 where Mena got that plate from?

15 A No.

16 Q Do you know to this day who  
17 directed Mena to put the plate on the  
18 back of the van?

19 A Well, I know it wasn't  
20 Dickinson.

21 Q I'm asking you: Do you  
22 know who it was?

23 A Well, I'm telling you,  
24 there's one person I can exclude. It  
25 wasn't Dickinson.

1 L. GERDES, ESQ.

2 Q Other than that, you don't  
3 know who it was?

4 A No, besides Dickinson and  
5 Soto. They would be the only two people  
6 who ever were in the van coming back.

7 Q I believe you said that you  
8 don't have Bonilla's case file anymore;  
9 is that correct?

10 A Correct.

11 MR. MOUTON: I am going to  
12 keep this deposition open, or  
13 deem it to remain open,  
14 subject to receiving the  
15 various documents that, I  
16 believe, are missing from the  
17 discovery here today, and, as  
18 well, because of counsel's  
19 direction to his client not to  
20 answer questions related to  
21 financial information.

22 MR. FRANCOLLA: For the  
23 record, I see absolutely no  
24 basis whatsoever to ever  
25 reopen this deposition. We'll